SINYIUM ANAK MUTIT v. DATUK ONG KEE HUI

[O.C.J. (Wan Mohamed J.) September 14, 1981]
[Kuching — Civil Suit No. K 109 of 1973]

Contract — Party membership — Contract requiring termination as Member of Dewan Rakyat on resignation from political party — Illegal — Contract contrary to public policy.

Political party — Membership — Contract requiring termination as Member of Dewan Rakyat on resignation from political party — Illegal and contrary to public policy.

The plaintiff was a member of SUPP, a political party in Sarawak. The defendant was the President of the party. The plaintiff sued the defendant for, *inter alia,* money received by SUPP on behalf of the plaintiff and damages for malicious falsehood, fraudulent misrepresentation and conspiracy.

The plaintiff had, before he was registered as a party candidate, signed some undertakings and letter of consent. These were required by SUPP as conditions precedent to a person being nominated as a candidate on the party ticket. The plaintiff signed the letter addressed to the Chairman and Secretary-General, SUPP dated April 5, 1969 stating, *inter alia,* "that in the event of my doing any act which to the Central Working Committee may seem to be against the interest of the Party, I will forfeit my seat in the Dewan Rakyat and you may submit the letter of resignation which I append hereto to the Speaker."

The main issue was the resignation of the plaintiff from the party which was followed by the action of the defendant and the Party Secretary-General in forwarding the letter of resignation to the Speaker of Dewan Rakyat resulting in the termination of the plaintiff as Member of Dewan Rakyat.

Held: (1) it is against public policy for a Member of Parliament or State Legislative Assembly to be made obliged by any political party or any other body of which he is a member to resign from either the Dewan Rakyat or the State Legislative Assembly when the member resigns from the Party. To recognise such an arrangement would amount to a degradation of the Honourable House which is the fountain of democracy in Malaysia;

(2) the submission of the letter of resignation earlier signed by the plaintiff to the Speaker, Dewan Rakyat, was therefore a wrongful act on the part of the defendant and therefore the plaintiff was entitled to damages for the sum he would have received until the dissolution of the Dewan Rakyat. Other claims for damages were dismissed.

CIVIL SUIT.

T.O. Thomas for the plaintiff.

C.T. Wong for the defendant.

Cur. Adv. Vult.

Wan Mohamed J.: Plaintiff, Sinyium anak Mutit, was a member of Sarawak United Peoples Party (SUPP), a political party in Sarawak, and the defendant, Datuk Ong Kee Hui, was and is the President of the Party. The plaintiff sued the defendant in his personal capacity and as an officer of the Party by virtue of section 9 of the Societies Act, 1966. The plaintiff claims: —

(1) $8,024.74 for money received by SUPP on behalf of the plaintiff;

(2) That an account be taken of the moneys received by the Sarawak United Peoples Party on behalf of the plaintiff;

(3) Damages for malicious falsehood;

(4) Damages for fraudulent misrepresentation;

(5) Damages for conspiracy;

(6) $42,750.80 Special Damages;

(7) Costs;

(8) Any other relief.

The plaintiff became a member of the SUPP in 1967 and was engaged as a field worker for the Party with a salary of $150 per month. In April 1969, he was nominated to be a candidate for the Parliamentary Constituency of Bau-Lundu as a Party candidate. Before he was actually registered as a candidate, he, as any other member of the Party who was going to be registered as candidate on SUPP ticket, had to sign some undertakings and letter of consent. These arrangements and agreements were required by the Party (SUPP) as conditions precedent to a person being nominated as a candidate on the Party ticket. This resulted in the plaintiff signing the letter addressed to the Chairman and Secretary-General, SUPP, dated April 5, 1969, (Exhibit PL-10-B). The relevant parts to this case would be the following two clauses: —

"I, the undersigned, do solemnly declare that upon my election to be a Member of Dewan Rakyat, I will sincerely and faithfully:—

1. ....
2. ....
3. ....
4. Donate to the Party the allowance paid to me by the Dewan Rakyat.
5. ....

I further declare that in the event of my doing any act which to the Central Working Committee may seem to be against the interest of the Party, I will forfeit my seat in the Dewan Rakyat and you may submit the letter of resignation which I append hereto to the Speaker."

The letter of resignation referred to in the above quotation is the document produced by the plaintiff as Exhibit PL-10-C. It was signed by the plaintiff without any date written on it. This was known to both parties and the date was purposely left out and it would be dated when it was going to be submitted to the Speaker.

The plaintiff in his evidence stated that he did not authorise anyone to insert the date and he signed it as a joke. The trial court finds that this is a ridiculous proposition which no reasonable person would believe. Plaintiff was not an illiterate. He initialled every cancellation on Exhibit PL-10-B and Exhibit PL-10-C. In all probabilities he knew that the letter would be dated when he would act contrary to the terms in his letter of declaration (Exhibit PL-10-B). It is not disputed that Exhibit PL-10-C was signed by the plaintiff before he was a Member of Parliament and so was the letter of declaration (Exhibit PL-10-B).

The plaintiff after receiving the letter from Setiausaha, Dewan Rakyat/Parliament (Exhibit PL-10) went to consult a lawyer for opinion in respect of his resignation from Dewan Rakyat. He incurred a sum of $1,405 (receipts produced — Exhibits PL-11-A and PL-11-B) for which the plaintiff claims as part of Special Damages.

Evidence was adduced and not disputed that the plaintiff's allowance was paid and credited to the account of the Party, amounting to $11,624.70, out

of which $3,600 had been received by the plaintiff by instalments of $300 per month. The money was paid to the Party account on the written instruction signed by the plaintiff (Exhibit DF-1 and Exhibit DF-2) as his donation in compliance with Clause 4 of the Letter of Declaration (Exhibit PL-10-B). In short, the plaintiff, so long as he remained a member of the Party, had complied with the above-mentioned Letter of Declaration.

The Party in turn paid back $300 per month to the plaintiff for his monthly expenses. The plaintiff did, on March 24, 1971, write to the Secretary-General, SUPP (DW2), for an increase of his monthly allowance to $600. There was no written reply to it. However, a meeting was held between the plaintiff and the Secretary-General of SUPP and the plaintiff's request was apparently turned down verbally. The Secretary-General, SUPP (DW2), stated in evidence that besides giving some money from his own pocket he made arrangements and stood as surety for the plaintiff to have an overdraft of $3,500 from Kwong Lee Bank, Kuching, which the plaintiff took and failed to pay back and that DW2 is now being demanded by the bank to pay, being the Guarantor.

Plaintiff wrote to the Secretary-General that he resigned from the Party (letter — Exhibit PL-3). His reason for resigning as stated in his letter of resignation (Exhibit PL-3) was that he was dissatisfied with the manner in which the Party affairs were being conducted and in particular mentioned that he had repeatedly called for an Annual General Meeting of the Party and that it had not been done until then.

There was a Promissory Note (Exhibit PL-14) signed by the plaintiff. The plaintiff denied having received that sum of money of $15,000 from the defendant or the Party. He also stated that the Note was without the date when he signed it and said that he did not know who inserted the date on that Promissory Note. This was later explained by the defendant (DW1) and the Secretary-General of the Party (DW2). In their evidence they stated that all Party candidates who could not afford to pay election campaign expenses had to sign similar documents like that of Exhibit PL-14 as the expenses for the election campaign in their respective constituencies were borne by the Party. They also stated in their evidence that each of every successful Party candidate contributed his monthly allowances both from Council Negri and Dewan Rakyat to the Party and only those who had no other income of their own were paid back a certain sum of money for their monthly expenses; and in the case of the plaintiff $300 per month was paid to him until he resigned from the Party. All successful candidates signed letters of authority and consent to the effect that either Council Negri or Dewan Rakyat members pay their allowances to the Party. The plaintiff had done so as in Exhibit DF-1 and Exhibit DF-2.

The important and main issue in this case is the resignation of the plaintiff from the Party which was followed by the action of the defendant and the Party Secretary-General in forwarding the letter of resignation (Exhibit PL-10-C) to the Speaker of Dewan Rakyat resulting in the termination of the plaintiff from becoming a Member of Dewan Rakyat.

The trial court finds as of fact that the plaintiff had a full knowledge of all the contents of the documents he signed especially of those documents produced in court at the trial. The plaintiff's statement which was given on oath at the hearing to the effect that he did not know the contents of them all is mere pretence and cannot be taken as true as I have already stated earlier.

It is not disputed that the date on the letter of resignation in Exhibit PL-10-C was inserted after the Secretary-General of the Party (DW2) received the plaintiff's letter of resignation as a member of SUPP. The plaintiff to all intents and purposes must have known that the date would be inserted on Exhibit PL-10-C before it was submitted to the Speaker of Dewan Rakyat. The word "Dated" was already there at the time of the plaintiff's signing it.

The plaintiff in his evidence stated that he did not authorise anyone to insert the date on Exhibit PL-10-C. This was not sufficient to deter the Secretary-General or the Chairman of the Party from inserting the date when the plaintiff resigned from the Party and before Exhibit PL-10-C was sent to the Speaker, Dewan Rakyat. The trial court cannot find any element of fraud or conspiracy on the part of the defendant or the Party (SUPP). If at all there was any conspiracy, the plaintiff himself was a party to it. He had, with other members of the Party, conspired to have those arrangements which became the practice of the Party to make all the Party candidates to the Council Negri and Dewan Rakyat sign those undertakings and declarations before they are actually registered as candidates on Party tickets. The subsequent acts of the Secretary-General and the Chairman were the result of such arrangements or conspiracy.

The only point which the trial court finds to be of relevance and ought to be considered is the question relating to such arrangements particularly the contract between each of the Members of Dewan Rakyat and Council Negri, including the plaintiff, and the Party to the effect that his resignation from the Party would entitle the defendant and the Party to submit the letter of resignation which was earlier signed by the plaintiff, to the Speaker, Dewan Rakyat, the result of which the plaintiff ceased to be a Member of the Dewan Rakyat. The trial court is of opinion that such a contract is against public policy and liberty of a Member of the Dewan Rakyat. It is against public policy for a Member of Parliament or State Legislative Assembly to be made obliged by any political party or any other body of which he is a member to resign from either the Dewan Rakyat or Council Negri (State Legislative Assembly) when the Member resigns from the Party. To recognise such an arrangement would amount to a degradation of the Honourable House which is the fountain of democracy in our country.

The arrangement that the plaintiff undertook to donate his monthly allowance or salary to the Party as stated in paragraph 4 of Exhibit PL-10-B which

came into effect after the plaintiff signed the letter requesting the Clerk to Dewan Rakyat to remit his monthly salary to Messrs. Kwong Lee Bank Bhd. (Exhibit DF-1) and his letter to Kwong Lee Bank (Exhibit DF-2) requesting the Manager of the bank to credit his salary to the account of the Party (SUPP) clearly shows that the plaintiff had honoured the declaration which he made prior to his becoming a Member of Dewan Rakyat. However, we have the evidence of the defendant and that of DW2, the Secretary-General of the Party, to the effect that such contribution was required to defray the election expenses borne by the Party. The total amount was $15,000 for which the plaintiff signed the Promissory Note as in Exhibit PL-14.

Based on the above facts given in evidence by both parties and on going through the arguments and submissions by counsel of both parties, the trial court comes to the following conclusions: —

(1) There was no fraud, conspiracy or malicious falsehood on the part of the defendant;

(2) The claim for consultation fees in the sum of $1,405 is not allowed as it was not shown to be relevant to the present suit against the defendant;

(3) The contract between the plaintiff and the Party resulting in the termination of the plaintiff from being a Member of Parliament is illegal because it is against public policy. The submission of the letter of resignation earlier signed by the plaintiff to the Speaker, Dewan Rakyat, was therefore a wrongful act on the part of the defendant and therefore the plaintiff is entitled to damages. The plaintiff had lost a sum of $41,325.80 which he would have received until the dissolution of the Dewan Rakyat. The plaintiff however is obliged to pay back the $15,000 which he had partly honoured before his resignation. He is therefore not entitled to the sum of $8,024.70 retained by the Party, and a further sum of $6,975.30 is to be deducted from the $41,325.80; the total sum which the defendant has to pay the plaintiff in damages is therefore $34,350.50;

(4) Other claims for damages are not allowed and dismissed;

(5) As the claims made by the plaintiff against the defendant are partly vexatious, the trial court orders that the plaintiff is awarded only one-half of the costs to be taxed.

Order accordingly.

Solicitors: *Thomas & Co.; Yong & Wong & Co.*

DR. TI TEOW SIEW & ORS. v. PENDAFTAR GERAN-GERAN TANAH NEGERI SELANGOR

[O.C.J. (Hashim Yeop A. Sani J.) September 30, 1981]
[Kuala Lumpur — Originating Motion No. A 15 of 1981]

Land Law — Alienation of land — Restriction in interest — Date when restriction commenced — Date of registration — National Land Code, ss. 5, 78(3) & 105.

In this case land had been alienated to the first applicant, the title being endorsed with the following endorsement of restriction in interest — "The land hereby leased shall not be transferred or leased for a period of fifteen years without the consent of the Ruler in Council."

The title also contained particulars stating *inter alia* that the title commenced from August 18, 1964. The alienation of the land was registered after full payment of premium and other fees on November 9, 1967. The first applicant transferred the land to the 2nd and 3rd applicants on May 5, 1980 and the 2nd and 3rd applicants also executed a charge in favour of the 4th applicant on the same day. The memorandum of transfer and charge were presented for registration but were rejected by the respondent on the ground that the restriction in interest was still subsisting.

The question was whether the restriction in interest commenced from the date endorsed on the title, that is August 18, 1964 or the date when the alienation was registered that is on November 9, 1967.

The applicants applied to set aside the decision of the respondent in refusing to accept the documents for registration and for a declaration that the restriction in interest endorsed on the document of title expired on August 17, 1979.

Held: the restriction in interest commenced from the date of registration of the register document of title, that is, November 9, 1967, and the respondent was therefore correct in rejecting the documents presented for registration.

Cases referred to:-

(1) *Fels* v. *Knowles* (1906) 26 N.Z.L.R. 604.

(2) *Malayan Borneo Building Society Ltd.* v. *M. Ramachandran* [1959] M.L.J. 182.

(3) *Boyd* v. *Mayor etc. of Wellington* [1924] N.Z.L.R. 505.

ORIGINATING MOTION.

C.T. Khaw for the applicants.

Abdul Malik Salleh, Legal Adviser, Selangor for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: In this Originating motion the applicants are asking for a number of orders the most important among which is an order to set aside the decision of the Pendaftar Geran-Geran Tanah Negeri Selangor (Registrar of Titles, Selangor) dated February 21, 1981 refusing to accept for registration the memorandum of transfer and a charge in respect of property of the first applicant held under H.S.(D) 8502 PT. No. 1 Jalan 14/48 in the Mukim of Petaling Jaya. The applicants also seek for a declaration that the restriction in interest endorsed on the document of title of the said property expired on August 17, 1979.

From the affidavit of the lawful attorney of the first applicant, sworn on June 10, 1981, the following facts are disclosed. The first applicant is and was at all material times admittedly the *registered proprietor* of the property in question. By a sale and purchase agreement dated March 25, 1980 he agreed to sell and the 2nd and 3rd applicants agreed to pur-